85-154

Office-Supreme Court, U.S.
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MAY 4 1985
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No.

IN THE

Supreme Court of the United States

April Term, 1985

ROBERT A. PFLUGER *Petitioner*

v.

ILLINOIS DEPARTMENT OF REVENUE and
UNITED STATES INTERNAL REVENUE SERVICE
Respondents

PETITION FOR WRIT OF CERTIORARE TO THE STATE OF ILLINIS SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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32 pp

(a) QUESTIONS PRESENTED FOR REVIEW

1. Does the Illinois State Income Tax law P.L. 76-261 as it is being applied to individual citizens, violate the intent of the United States Constitutional limitation on taxation, namely, the prevention of levelling?
2. Do the State Courts under the 10th Amendment to the U.S. Constitution have the right to adjudicate matters involving direct taxes imposed without apportionment by Congress on the citizens of the State in order to prevent the centralization of power in one body so that tyranny may be prevented in the Federal Government?
3. Is the Federal Income tax commonly known as the Income Tax Act of 1954 unconstitutional because it is being used as a levelling device?
4. Did the Circuit Court err in refusing a jury trial to determine tyranny and or fraud and or deceit of the Federal and State Governments' laws on taxation?
5. Since the Illinois Income Tax is based on the privilege of receiving income, is plaintiff receiving a privilege upon which this tax can be placed and what is the privilege and is he required to pay the State income tax on the monies he receives as fees from his patients for services rendered to them?
6. Should this case be remanded back to the State Courts to determine the issued raised therein?
7. Should the Appellate and Supreme courts of the State of Illinois have dismissed this case without comment?
8. Did the lower Courts err in not deciding any of the above questions?

Circumstances of the Case

Petitioner learned that the intent of the United States Constitutional limitation on taxation was to prevent levelling and the Illinois Income Tax was based on the privilege of receiving income.

On Nov. 22, 1983, Petitioner sent a letter to the Illinois Department of Revenue protesting his payment of monies paid under the Illinois State Income Tax because,

1. The tax law was used as a levelling device and levelling was against the intent of the United States Constitutional limitation on taxation and

2. The Illinois Income Tax is based on the privilege of receiving income and neither petitioner nor his hired help receive a privilege upon which this tax can be based.

The monies were not returned and petitioner considered himself damaged.

(b) Not applicable, all parties in Caption

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No.

IN THE SUPREME COURT OF THE UNITED STATES

APRIL TERM, 1985

ROBERT A. PFLUGER PETITIONER

V.

ILLINOIS DEPARTMENT OF REVENUE AND THE UNITED STATES INTERNAL REVENUE SERVICE RESPONDENTS

PETITION FOR WRIT OF CERTIORARE TO THE STATE OF ILLINOIS SUPREME COURT

ROBERT A. PFLUGER, PRO SE, PETITIONS FOR A WRIT OF CERTIORARE TO REVIEW THE DISMISSAL OF THIS CASE BY THE SUPREME COURT OF THE STATE OF ILLINOIS

(d) Reference to Reports

In the appendix is listed a letter from the Ill. Dept. of Revenue denying Petitioner's request for a refund and a resolving of the matter in question and the order of the Circuit Court dismissing with prejudice.

Also listed the Appellate and Supreme Courts dismissal without comment.

(e) Jurisdiction of this Court

(i) The Ill. Supreme Court dismissed the appeal on 2-4-85 and dismissed a motion to file instantor on Feb. 27, 1985.

(ii) In the Circuit Court a Motion for Reconsideration or Rehearing was heard and denied on Aug. 24, 1984. In the

Appellate Court a Motion for Reconsideration or Rehearing was denied on Jan. 8th.

(iv) The statutory provision which provides for a writ of certiorari is 28 U.S.C. 1257 (3).

(f) Constitutional Provisions

Art. I Sec. 2 Cl. 3
Art. I Sec. 8 Cl. 1,6 and 10
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Amendments 9, 10, 16th
Illinois Income Tax Act Chap. 120 P.A. 76-261
The Internal Revenue Code of 1954 as Amended
All of the direct payment benefit laws

(g) Concise Statement of the Case

On May 9th, 1984, according to the Illinois Statutes Chap. 127 para. 172 2a and 2a1, Petitioner filed a petition at law in the Winnebago County Circuit Court, 17th Judicial Circuit, Winnebago, Illinois seeking:

1. A declaratory Judgement on
   a. The Illinois State Income Tax Law, P.L. 76-261
   b. The United States Internal Revenue Code of 1954 as amended.
2. Return all monies under protest.
3. A Permanent restraining order to the Illinois Dept. of Revenue from collecting any such withholding or income tax from fees or compensation for labor.
4. A temporary restraining order to prevent the Illinois Dept. of Revenue from placing protest money into the general revenue fund.

Petitioner also charged tyranny, fraud and deceit in the Federal and State Income tax laws and demanded a jury trial to determine such fact.

On June 4, 1984 the Illinois Dept. of Revenue filed a Motion to Dismiss stating that the Constitutionality of the Illinois State Income Tax law had already been ruled on in Thorpe v. Mahim 43 Ill. 2d 36, 250 N.E. 2d 633.

On June 7th, the United States Government filed a Petition for Removal of a Civil Action to move them to Federal Court and out ot the State Courts.

The Federal Court ordered briefs in the matter from both parties Petitioner filed his and the United States Government did nothing. No further action was taken by the Federal Court or the Government.

On June 20th, 1984, the State Court granted Petitioners' Motion for a temporary restraining order placing all protested funds into a special account.

On July 11th, 1984, the case was heard by the Court and on July 12th the Case was dismissed with prejudice.

On Aug. 24th, a Motion for Reconsideration was heard and denied.

On Oct. 5th, a Notice of Appeal was filed.

On Oct. 19th, the Appellate Court of Ill. ordered up a briefing schedule with the record to be certified by 12-7-84 and appellants' brief due 1-11-85.

On Nov. 26th, a Motion to Dismiss the Appeal was filed by the State Attorney stating that the entire cause of action was removed from the State Court to the Federal Court and this removal did not leave any case involving the named defendants to be heard in State Court.

On Dec. 4th, the Appellate Court granted the Motion to Dismiss the Appeal without comment.

On Jan. 8th, 1985, the Court entered an order denying a Motion to Reconsider the dismissal without comment.

On Jan. 31st. Petitioner filed a petition for an extension of time to file a petition for leave to appeal in the Supreme Court of Illinois along with his appeal believing that time had run out for filing his petition because a Motion for Rehearing and a Motion for Reconsideration were not the same thing in regards to preserving the time for appeal but subsequently learned that they could be considered the same. Bothke v. Terry 713 F.2nd 1405. pg. 1405.

On Feb. 4th. the Petition was denied without comment.

In another attempt to get the Court to listen, a petition for leave to appeal instantor was filled and it was denied by the Supreme Court of the State of Illinois on Feb. 27, 1985 without comment.

Petitioner now has filed this case in the Supreme Court of the United States.

(h) The Federal questions being raised in this case were raised in the very 1st presentation to the Court on July 11, 1985 in an oral statement which was supplemented with written statements which were incorporated into the file. In the written statements was a request for Judicial Notice of all the direct payment benefit laws.

In the complaint, Art. I Sec. 2 Cl 3, Sec. 9, Cl4, and Sec. 8 CL 1 and the Internal Revenue Code of 1954 and the Illinois Income Tax P.A. 76-261 are raised on pg. C1. They are also raised in the Report of Proceedings of June 13th on pg. 11 and of July 11th on pg. 13.

The Privilege argument is raised on the complaint in Averment 2 and 12 on pg. C2.

The issue of Jury Trial to determine Tyranny, fraud and deceit are raised in the complaint in averment 13 pg. C3 and in Report of Proceeding of July 11th on pg. 10-12.

The limitation of Federal Government are raised in the Report of Proceeding of July 11th on pg. 30 and in averment 46 of complaint pg. C6.
The issue of Stare Decisis was raised on Aug. 24th, 1984 on pg. 9 of the Report of Proceeding.

In the Appellate Court, since the Court granted a Motion to dismiss from the government before the appeal was heard, the petitioner filed a motion for reconsideration along with a copy of the entire complaint filed in Circuit Court and the certified record of the Federal Court to show that the entire case had not been petitioned to the Federal Court and to preserve all of the issues for appeal.

(J) ARGUMENT

Not to decide is to decide.

That is what the Illinois State Appellate Court and Supreme Court have done. They have refused to even hear a case which involves a violation of the Federal Constitution by dismissing it without comment.

This case involves an attempt to get the Illinois income tax declared unconstitutional because it violates the Federal Constitutional limitation on taxation.

One of the very fundamental principles which all governments and laws proceeding from governments should follow is the principle laid down in the Ten Commandments, THOU SHALT NOT STEAL.

This principle is so engrained in the human race as being correct that it becomes near ridiculous to mention it. Mention it we must though, to emphasize that it is the basic tenet upon which our founding fathers developed the Constitutional limitation on taxation. They wished to prevent the government from redistributing the wealth of one man to another, or from one class of people to another or from one State to another by using the force of the government.

They did this by placing in the Constitution in Art. I Sections 2 Cl.3, Section 8 Cl. 1 and Section 9 Cl.4.

The idea of levelling was promoted by a political party, the Levellers, in England during the reign of Charles I. They wanted to make everyone equal by the redistribution of goods. They were highly criticized for their plan because it would destroy the incentive to work. The same is true today for a number of citizens. With all the aid received from the government, the desire to work to survive gets destroyed.

No clearer statement can be found regarding levelling than that of Samuel Adams. Appendix, Life of Samuel Adams:

> "The utopian schemes of levelling and a community of goods are as visionary and impracticable as those which vest all property in the Crown, are arbitrary, despotic, and in our government, unconstitutional."

Since the intent of the law is the law, the intent of our founding fathers to prevent levelling is still the law which governs the constitutional limitation on taxation.

The 16th Amendment did not eliminate this intent. Nowhere in the Congressional records of the Senate in 1909 where the proposed amendment was discussed, was the intent to eliminate the intent to prevent levelling discussed or intended. Their intent was to raise money for the government to build roads, bridges, buildings and pay the bills of the government by taxing the wealth of the country through an income tax without consideration of apportionment. The intent of our founding fathers not to have levelling remained intact. See Table of Authorities pg. 4. No. 2 and read entire record of Senate 1909 regarding income tax.

All of the direct payment programs which are in existence today were not proposed then, nor were they intended. The fact of the matter is, levelling is taking place and the intent to prevent it via the mode of direct unavoidable taxation has been circumvented.

The State of Illinois must follow the intent to prevent levelling as well as the Federal Government.

The State of Illinois requires the citizen of the State of Illinois who pay Federal income tax to pay State income tax and then the State places the monies collected into a general revenue fund and from that fund they pay direct payment benefits to other classes of people.

A combination of Federal and State aid provide all the benefits needed to sustain life while not working for it. Judicial notice of all direct payment benefit laws necessary to see this. This is a clear case of levelling and is in violation of the Federal Constitution. In addition it is simply repugnant to the Constitution because it violates God's universally acclaimed law, THOU SHALT NOT STEAL, because the tax is forced out of people and given to other people using the government as the instrument of legal plunder.

This beligerant claiment of his rights wants it stopped.

Pollack v. Farmer Loan and Trust Co. 158 U.S. 601 (1895) basically stated that some incomes could not be separated from the source and that a tax on them would be a direct tax. Brushaber v. Union Pacific R.R. Co. 240 U.S. (1915), basically confirmed this judgement.

Congress, in order to raise money and tax the wealth of the nation but not to circumvent the intent to prevent levelling, passed the 16th Amendment. Subsequently, in the following years Congress passed laws which benefited classes of people and used the monies collected by the Internal Revenue Codes under the 16th Amendment to accomplish this, thereby circumventing the mode to prevent levelling.
However, mere passage of a law by Congress does not give power to the Federal Government over individual citizens if the constitution forbids it. Hamilton in the Federalist Papers stated:

> "Except as to the rule of apportionment, the United States have an indefinite discretion to make requisitions for men and money; but they have not authority to raise either by regulations extending to the individual citizens of America."

The Federal government, therefor has no jurisdiction over me as an individual citizen in regards to direct taxes imposed on my income which cannot be separated from the source, regardless if that income is taxed without apportionment.

The idea of separation of powers by the methods and manners of our founding fathers in setting up the government must be considered. The 9th and 10th Amendments were placed in the Constitution to assure the prevention of tyranny by attempting to make it clear that the Federal Government did not have all the rights and power but only those given to it by the Constitution and in regards to crimes, only those crimes of treason, counterfeiting and felonies over the high seas were given to Congress to make laws about. Madison, in the Federalist papers alludes to this separation of power No. 37, pg. 227:

> "The genius of republican liberty seems to demand on one side not only that all power should be derived from the people, but that those intrusted with it should be kept in dependence on the people by a short duration of their appointments; and that even during this short period the trust should be placed not in a few, but a number of hands."

It was intended that the Federal Government would raise taxes for it's use by indirect means and the citizens would have control over this type of taxation by exercising his right to buy or not to buy the commodity upon which the tax was placed. No. 42, Hamilton pg. 142:

"It is a signal advantage of taxes on articles of consumption that they contain in their own nature a security against excess. They prescribe their own limit, which cannot be exceeded without defeating the end proposed-that is an extension of the revenue. When applied to this object the saying is as just as it is witty that, "in political arithmetic, two and two do not always make four,". If duties are too high, they lessen the consumption; the collection is eluded; and the product to the treasury is not so great as when they are confined within proper and moderate bounds. This forms a complete barrier against any material oppression of the citizens by taxes of this class, and is itself a natural limitation of the power of imposing them."

Imposition of this kind usually fall under the denomination of indirect taxes, and must for a long time constitute the chief part of the revenue raised in this country."

The history of this country shows that we formed a Republican form of government in which one of the purposes was to prevent the redistribution of goods in a free society. The Theory and Practice of Socialism and the Roots of Capitalism and the Works of James Wilson and Not Yours to Give, give testimony to this statement.

The Income Tax Act of 1954, because it provided for the collection of monies via a tax levied on incomes without regards to apportionment and did not provide for the limiting of, "where those funds could be appropriated," in order to prevent levelling, is therefore unconstitutional.

> "an Act of Congress not authorized by the Constitution is not to be regarded as the supreme law of the land . . . and it is the duty of the federal courts to declare it unconstitutional."
> Ableman v. Booth, 16 L Ed. 169.

In U.S. v. Janet Woodley, this Court has affirmed the contentions laid forth by this petitioner, namely, that in spite of long historical practices, all laws of Congress are subject to Constitutional limitations. The Court on pg. 19 stated;

> ". . . policy arguments supporting even useful political inventions are subject to the demand of the Constitution which defines powers and, with respect to this subject, sets out just how those powers are to be exercised."

Therefor it is concluded that the federal government does not have control over citizens regarding direct taxation levied without regards to apportionment under the 16th Amendment.

To further the argument of levelling, if we look at what the Courts have said and not said, in Loan Association v. Topeka 20 Wall 664, the court said;

> If B takes A's property by force for his own use, it is equivalent to a claim of mastery by B and a condition of servitude for A. And when government by form of law takes the property of A and gives it to B, whether by direct confiscation or by indirect means, it is a violation of duty and a usupation of power, 'It is nonetheless robbery, because it is done under the forms of law and is called taxation.' "

What the Court did not say yet is because the Court was never asked is this, "Is the Income Tax Act of 1954 unconstitutional because it is used as a levelling device?"

The only time the Supreme Court of the U.S. ever used the word levelling in regards to taxation was in Douglas v. California 372 U.S. 353, 9 L ed. 2d pg. 817-818, and then the Court was not asked if the Income tax was or was not in violation of the intent to prevent levelling.

REGARDING PRIVILEGE

The issue regarding privilege is basically this:
There is no privilege attached to receiving income from fees for services as a dentist and there is no privilege attached to the wages received for labor performed for the dentist by the dental assistants. The income received from either of these two situations comes from a right not a privilege.

REGARDING JURY TRIAL

Since jury trials were instigated to protect citizens and free men from tyranny of the government, a jury trial should be held, especially when demanded and tyranny is specifically charged.

Conclusion

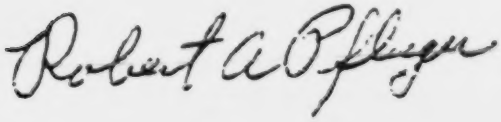
The Petition for Writ of Certiorari should be granted:
Since it was intended to prevent levelling through a mode of taxation and the mode has been circumvented and the intent still remains and since levelling has taken place slowly over a period of years through inactment of benefit laws by Congress and the State of Illinois unimpeded by restrictive clauses in the Internal Revenue Code, in order to set things right, the method of taxation on incomes must be struck down and declared unconstitutional, not for what it once was but for what it has become, a levelling device. These methods are The Internal Revenue Code of 1954 and The Illinois Income Tax Act as they apply to individuals' income received as a right and taxed as a direct tax without apportionment.

Further it should be declared that in order to prevent tyranny of the Federal Government that the power of the Federal Government over individual citizens of various States in regards to direct taxation levied without apportionment, is non-existent unless a direct tax is levied upon a State and the State does not pay that tax then the Federal Government may intervene and impose it directly without apportionment upon the citizens.

Further it should be stated that there is no privilege attached to the incomes received from natural occupations as distinguished from incomes received through some privilege such as interest on bonds or practicing law as a licensed attorney.

Further it should be stated that a jury trial should be had to determine tyranny, fraud and deceit and that the State Court have jurisdiction over matters involving direct taxation and the rule of "stare decisis" should be clarified regarding exceptions.

Respectfully submitted,



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Illinois Department of Revenue
1500 South Ninth Street
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February 24, 1984

Robert A. Pfluger, D.D.S.
3703 North Main
Rockford, IL 61103

Dear Dr. Pfluger:

This is in reply to your letter of January 17, 1984 which was forwarded to the Legal Division by the Department's Processing Bureau.

It is the Department's policy not to respond to "tax protest" letters such as yours on a point-by-point basis because it is our belief that to do so would be to waste our limited resources. Furthermore, it has been our experience that such letters usually reflect personal opinions and frustrations with our tax laws that are more appropriately directed to the writers of these laws, namely our Representatives in the Illinois General Assembly.

The mission of the Illinois Department of Revenue is, among others, to encourage and achieve the highest possible degree of voluntary compliance with the Illinois tax laws and regulations. While tax collection is not a popular function of government, it clearly is a necessary one, without which all other functions would eventually cease. In this regard, taxes are the price we pay for civilization.

Regarding refund of withholding tax, our withholding forms are not designed for claims based on "legal" arguments such as yours. The IL-941X, copy enclosed, is designed for making corrections for underwithholding or overwithholding, rather than for challenging the withholding tax laws. Nevertheless, if you desire to file a claim for refund under section 909(a) of the Illinois Income Tax Act (IITA), the IL-941-X would be the appropriate form to use. However you are cautioned to avoid stating your claim in a way that would constitute fraud. You are also advised of the civil penalty for willful failure to collect and pay over withholding tax (IITA 1002(d)), and of the criminal provision for willful violations of rules and regulations of the Department (IITA 1301).

Regarding "payment under protest" procedures, this is controlled by Illinois Revised Statutes chapter 127 para. 172. It appears you have not satisfied the requirements for "payment under protest". Consequently, we are treating your payment like any other.

Very truly yours,

Joseph E. McMenamin
Income Tax Legal Division
Supervisor
Springfield Office
217/785-5596

Enclosure: IL-941X
JEM:ead

STATE OF ILLINOIS)
) SS
COUNTY OF WINNEBAGO)

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
WINNEBAGO COUNTY, ILLINOIS

DR. ROBERT A. PFLUGER, D.D.S.)
)
Plaintiff,)
)
vs.)
) No. 84 MR 83
ILLINOIS DEPARTMENT OF)
REVENUE AND UNITED STATES)
INTERNAL REVENUE SERVICE)
)
Defendants.)

ORDER

THIS CAUSE comes before the Honorable Judge Alford Penniman upon Plaintiff's Motion for a Temporary Restraining Order and subsequent to telephonic notice by the Plaintiff and an appearance and arguments by Plaintiff and Defendent, Illinois Department of Revenue, by and through its attorney, Neil F. Hartigan, Attorney General of the State of Illinois and the Court being fully advised of the premises:

IT IS HEREBY ORDERED THAT:

1. The sum of sixty-five dollars and eight cents ($65.08), which Plaintiff has paid under protest to the Defendent, Illinois Department of Revenue, shall be temporarily placed in a special protest fund as provided for pursuant to Ch. 127, par. 172, Ill. Rev. Stat., 1983 and shall remain in said fund pending further order of this court.

2. All future withholding payments or income taxes paid by Plaintiff, under protest, to Defendant, Illinois Department of Revenue, shall by placed in the same special protest fund mentioned above pending further order of the court form June 13, 1984, until such further order is received.

ENTER: _____

J U D G E

Dated at Rockford, Illinois this

_____ day of _____, 19 _____.

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT
WINNEBAGO COUNTY

ROBERT A. PFLUGER, Plaintiff, vs. ILLINOIS DEPARTMENT OF REVENUE and THE INTERNAL REVENUE SERVICE, Defendants.	)	No. 84 MR 83

ORDER

This cause coming on to be heard on Defendant's Motion to Dismiss and the Court having heard arguments and being fully advised in the premises finds that the decision of the Illinois Supreme Court in Thorpe v. Mahin, 43 Ill.2d 36, 250 N.E.2d 633 (1969), is controlling with respect to the issues presented by the said motion, and therefore said motion should be granted.

IT IS THEREFORE ORDERED that the Motion of the Defendant, the Illinois Department of Revenue, to Dismiss the complaint filed by the Plaintiff in this cause is hereby granted, and said complaint is hereby dismissed with prejudice.

_____

JUDGE

Entered: _____

State of Illinois
Appellate Court Second District
Elgin
Office of the Clerk

Appeal from the Circuit Court of County of Winnebago

Trial Court Number: 84MR83

THE COURT HAS THIS DAY, 10/19/84, ENTERED THE FOLLOWING ORDER IN THE CASE OF:

Gen. No.: 2-84-0965
Pfluger, Robert A. v. IL Dept.
Revenue & US IRS

On the court's own motion, it is ordered that the record on appeal or certificate be filed no later than 12/07/84, that the appellant's brief be filed no later than 01/11/85, that the appellee's brief be filed no later than 02/15/85, and that the reply brief, if any, be filed no later than 03/01/85.

It is further ordered that any request for extension of time be filed no later than 14 days prior to the due date proposed to be extended.

LOREN J. STROTZ, Clerk

Robert A. Pfluger
Pro Se
3703 N. Main St.
Rockford, IL 61103

State of Illinois
Appellate Court Second District
Elgin
Office of the Clerk

Appeal from the Circuit Court of County of Winnebago

Trial Court Number: 84MR83

THE COURT HAS THIS DAY, 12/04/84, ENTERED THE FOLLOWING FINAL ORDER IN THE CASE OF:

Gen. No.: 2-84-0965

Pfluger, Robert A. v. IL Dept.
Revenue US IRS

The motion by Appellant for an extension of time in which to file brief, is denied.
Motion by Appellee to dismiss this appeal.
Motion Allowed and Appeal Dismissed.
(Reinhard, Unverzagt, Lindberg, JJJ.)

LOREN J. STROTZ, Clerk

Robert A. Pfluger
Pro Se
3703 N. Main St.
Rockford, IL 61103

State of Illinois
Appellate Court Second District
Elgin
Office of the Clerk

Appeal from the Circuit Court of County of Winnebago

Trial Court Number: 84MR83

THE COURT HAS THIS DAY, 01/08/85, ENTERED THE FOLLOWING ORDER IN THE CASE OF: Gen. No.: 2-84-0965

Pfluger, Robert A. v. IL Dept. Revenue & US IRS

Motion by Appellant to reconsider the order dismissing the appeal entered December 4, 1984. Motion Denied.
(Reinhard, J. took no part.)

LOREN J. STROTZ, Clerk

cc: Robert A. Pfluger
Hon. Neil F. Hartigan
Jeff Margolin
Keith C. Syfert

State of Illinois
Supreme Court Clerk
Supreme Court Building
Springfield 62706
Juleann Hornyak
Clerk of the Court

February 4, 1985

Mr. Robert A. Pfluger
3703 North Main
Rockford, IL 61103

THE COURT HAS TODAY ENTERED THE FOLLOWING ORDER IN THE CASE OF:

No. 61383 - Robert A. Pfluger, petitioner, v. Illinois Department of Revenue, et al., respondents.

The motion by petitioner for an extension of time for filing petition for leave to appeal is denied.

JH:sdl
cc: Jeff Margolin
Glenn Archer, Jr.
Justice Moran

JULEANN HORNYAK, CLERK

State of Illinois
Supreme Court Clerk
Supreme Court Building
Springfield 62706
Juleann Hornyak
Clerk of the Court

February 24, 1985

Mr. Robert A. Pfluger
3703 N. Main St.
Rockford, IL 61103

In re: Robert A. Pfluger, petitioner, v. Illinois Department of Revenue, et al., respondents.
No. 61383

Dear Mr. Pfluger:

On January 31, 1985, we filed your motion for leave to file petition for leave to appeal instanter and same was referred to the full Court and denied on February 4, 1985. The Court gave no reason or are they required to do so in denying your motion.

In review of the above statement we are returning your motion.

Very truly yours,

Juleann Hornyak
Clerk of the Supreme Court

JH/hc
Enclosure

State of Illinois
Supreme Court Clerk
Supreme Court Building
Springfield 62706
Juleann Hornyak
Clerk of the Court

February 27, 1985

Mr. Robert a. Pfluger
3703 North Main Street
Rockford, IL 61103

THE COURT HAS TODAY ENTERED THE FOLLOWING ORDER IN THE CASE OF:

No. 61383 - Robert A. Pfluger, petitioner, v. Illinois Department of Revenue, et. al., respondents.

The motion by petitioner for leave to file petition for leave to appeal instanter is denied.

JH: sdl

cc: Jeff Margolin
Glen Archer, Jr.
Justice Moran

JULEANN HORNYAK, CLERK

1. AMENDMENTS TO THE U.S. CONSTITUTION.

a. NINTH AMENDMENT. The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

b. TENTH AMENDMENT. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

c. SIXTEENTH AMENDMENT. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

2. CONSTITUTIONAL PROVISIONS

Art. I Sec. 8 Cl. 3 Representatives and direct Taxes shall be apportioned among the several States which may be, etc.

Art. I Sec. 8 Cl. 1 The Congress shall have Power to lay and collect Taxes, Duties, Impost and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.

Cl.6. To provide for the Punishment of counterfeiting the Securities and current Coin of the United States.

Cl.10. To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations.

Art. III Sec. 2 Cl. 3. The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Art. III Sec. 3 Cl. 2. The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forteiture except during the Life of the Person attained.

INCOME TAX ACT. An Act to impose a tax on the privilege of earning or receiving in or as a resident of the State of Illinois. P. 76-261, Para. 1, approved July 1, 1969, eff. Aug. 1, 1969.

Life of Samuel Adams, Wells, pg. 154. 2nd para.

> "The utopian schemes of levelling and a community of goods are as visionary and impracticable as those which vest all property in the Crown, are arbitrary, despotic, and in our government, unconstitutional."

Works of James Wilson, McCloskey. Vol. I Harvard Press, pg. 241:

> "But however great the variety and inequality of men may be, with regard to virtue, talents, taste, and acquirements, there is still one aspect, in which all men in society, previous to civil government, are equal. With regard to all, there is an equality in rights and in obligation; there is that "jus aequum," that equal law, in which the Romans placed true freedom. The natural rights and duties of man belong equally to all. Each forms a part of that great system, whose greatest interest and happiness are intended by all the laws of God and nature. These laws prohibit the wisest and the most powerful from inflicting misery on the meanest and most ignorant; and from depriving them of their rights or just acquisitions. By these laws, rights, natural or acquired, are confirmed, in the same manner to all; to the weak and artless, their small acquisitions

as well as to the strong and artful, their large ones. If much labour employed entitles the active to great possesions, the indolent have a right, equally sacred to the little possessions, which they occupy and improve."

James Wilson was a signer of the Declaration of Indpendence and the United States Constitution and an Associate Justice of the Supreme Court of the U.S. from 1789 to 1798.

DIRECT PAYMENT BENEFITS LAWS

The Court was asked to take Judicial Notice of all Direct Payment Benefit laws to show the fact of levelling. It would be next to ridiculous to list them here for obvious reasons.

No. 15 Hamilton Federalist Papers 108

Except as to the rule of apportionment, the United States have an indefinite discretion to make requisitions for men and money; but they have no authority to raise either by regulations extending to the individual citizens of America. The consequence of this is that though in theory their resolutions concerning those objects are laws constitutionally binding on the members of the Union, yet in practice they are mere recommendations which the States observe or disregard at their option.

No. 21 Hamilton The Federalist pg. 142

There is no method of steering clear of this inconvenience, but by authorizing the national government to raise its own revenues in its own way. Imposts, excises, and in general, all duties upon articles of consumption, may be compared to a fluid, which will in time find its level with the means of paying them. The amount to be contributed by each citizen will in a degree be at his own option, and can be regulated by an attention to his resources. The rich may be extravagant, the poor can be frugal; and private oppression may always be avoided by a judicious selection of objects proper for such impositions.

If duties are too high, they lessen the consumption; the collection is eluded; and the product to the treasury is not so great as when they are confined within proper and moderate bounds. This forms a complete barrier against any material oppression of the citizens by taxes of this class, and is itself a natural limitation of the power of imposing them.

Impositions of this kind usually fall under the denomination of indirect taxes, and must for a long time constitute the chief part of the revenue raised in this country. Those of the direct kind, which principally relate to land and buildings, may admit of a rule of apportionment.

. . . The genius of republican liberty seems to demand on one side not only that all power should be derived from the people, but that those intrusted with it should be kept in dependence on the people by a short duration of their appointments; and that even during this short period the trust should be placed not in a few, but a number of hands.

But it does not follow that the re-examination of a fact once ascertained by a jury will be permitted in the Supreme Court. Why may not it be said, with the strictest propriety, when a writ of error is brought from an inferior to a superior court of law in this State, that the latter has jurisdiction of the fact as well as the law? It is true it cannot institute a new inquiry concerning the fact but it takes congnizance of it as it appears upon the record and pronounces the law arising upon it. This is jurisdiction of both fact and law; nor is it even possible to separate them. Though the common-law courts of this State ascertain disputed facts by a jury, yet they unquestionably have jurisdiction of both fact and law; and

accordingly when the former is agreed in the pleadings they have no recourse to a jury but proceed at once to judgement.

499 No. 83: Hamilton

The friends and adversaries of the plan of the convention, if they agree in nothing else, concur at least in the value they set up upon the trial by jury; or if there is any difference between them it consists in this: the former regard it as a valuable safeguard to liberty; the latter represent it as the very palladium of free government. for my own part, the more the operation of the institution has fallen under my observation, the more reason I have discovered for holding it in high estimation; and it would be altogether superfluous to examine to what extent it deserves to be esteemed useful or essential in a representative republic, or how much more merit it may be entitled to as a defense against the oppressions of an hereditary monarch, than as a barrier to the tyranny of popular magistrates in a popular government. . .

It has been observed that trial by jury is a safeguard against an oppressive exercise of the power of taxation.

500 No. 83: Hamilton

It is evident that it can have no influence upon the legislature in regard to the amount of taxes to be laid, to the objects upon which they are to be imposed, or to the rule by which they are to be apportioned. If it can have any influence, therefore, it must be upon the mode of collection and the conduct of the officers intrusted with the execution of the revenue laws.

And as to the conduct of the officers of the revenue, the provision in favor of trial by jury in criminal cases will afford the security aimed at. Wilful abuses of a public authority, to the oppression of the subject, and every species of official extortion, are offenses against the government, for which the persons who commit them may be indicted and punished according to the circumstances of the case.